

VIRGINIAN-PILOT.
—BY THE—
VIRGINIAN AND PILOT PUBLISHING COMPANY.
NORFOLK VIRGINIA AND DAILY PILOT.
(Consolidated March, 1888.)
Entered at the Postoffice at Norfolk, Va., as second-class matter.
OFFICE: PILOT BUILDING, CITY HALL AVENUE, NORFOLK, VA.
OFFICERS:
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THREE CENTS PER COPY.

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The VIRGINIAN-PILOT is delivered to subscribers by carriers in Norfolk and vicinity, Portsmouth, Berkley, Suffolk, West Norfolk, Newport News, for 10 cents per week, payable to the carrier. By mail, to any place in the United States, postage free:
DAILY, one year - - - \$5.00
" six months - - - 3.00
" three months - - - 1.50
" one month - - - .50

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Reading Notices invariably 25 cents per line first insertion. Each subsequent insertion 15 cents.

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TWELVE PAGES
TUESDAY, JUNE 20, 1899.

SHOULD THE JUDICIARY BE ELECTIVE?

That is a grave question, and there have been some recent occasions to press it afresh upon the people, with respect to both the Federal and State judiciary. At first blush, the average thought and feeling are decidedly adverse to the selection of these magistrates by the people. There seems a natural repugnance to placing candidates for "seats in judgment" to a scramble, as it were, for their places. In truth, no man fit to be a judge is at all likely to stoop to scramble for any public post, except under very extraordinary circumstances. Nor is a popular election necessarily a scramble; and a candidate will prevent it from descending to that, as regards himself, if he chooses.

In Virginia, State and county judges are all chosen by the General Assembly, except in cases of vacancy occurring when the legislature is not in session, when temporary appointments, or assignments, are made by the Governor of the Commonwealth. Without going into the history of the matter, the practical inquiry is, which method is the best by which to make our judges; by executive appointment, to hold during good behavior; or by popular election, to serve during limited, fixed terms; or by legislative election. The last mode is the one now obtaining in this State, and, on the whole, it appears to be a satisfactory compromise, notwithstanding that the people occasionally indicate a disposition to hold all public office at their own immediate disposal.

The National Democratic platform of 1896 recognized and reprobated in the Federal Judiciary a growing tendency toward "government by injunction," that is, to so extend the writ of injunction as not only to cover the cases for which it was designed, and to which it properly applies, but to give it the judge, or court, complete and final jurisdiction in matters of fact and law, touching persons and property, that under our form of government, our constitutions and laws, should go to a jury, or to the legislature for further action. In accordance with this suggestion and in pursuance of the ample powers with which it is clothed, our General Assembly at its last session passed an act limiting and guarding the arbitrary and peremptory construction sometimes placed by our courts on the old English common-law of injunction and contempt of court, especially as to constructive contempt, but leaving our courts fully empowered to protect themselves from direct contempts and to enforce their decrees. This act our Supreme State Court of Appeals has absolutely nullified, on the ground that a constitutional court has "inherent powers" above legislative control and which the act in question attempts to violate.

Thus, our State Judiciary has raised an issue between itself, the legislature and the people, and precisely on points where our constitution has plainly provided that our courts and judges should be amenable to the legislative direction and subordinate to the right of trial by jury in the people. What is the State—where is the State—in this dispute? With the legislature, the people and the plain mandates of our constitutions, State and Federal, as to the rights of persons, liberty and property? Or with our court of appeals and its pretended "inherent right" as against expressed fundamental provisions, to which the legislature seeks to give effect? Abstractly and theoretically considered, a court may have "inherent powers" ascribed to it; but in a free and constitutional government like ours, absolutely

constituted by the people, and deriving all its just powers from their consent and by their provision, there are no such "inherent powers" as our court of appeals assumes, especially when they come in conflict with the expressed will and right of the people.

Our judiciary has no more "inherent powers" in its relations to the people and other departments of the government than the executive or the legislative. Shall our executive, by common-law, or "inherent powers" claim and exercise royal powers and prerogatives? Shall our legislative department be recognized as "inherently" paramount, above and beyond the constitutions, laws and people? Yet either branch has the same right and power to set up this "inherent" pretence. It will not do. It is untenable and it is all the more inadmissible and intolerable because it is but a manifestation of the imperial spirit which now prevails, exalting and reinforcing official authority, pretension and usurpation, at the subversion of popular sovereignty and its institutions.

THE VIRGINIAN-PILOT raises no question as to the bona fides of the court in its effort to establish independence separate and paramount, amenable to no other part or department of government, nor to the people. But the question involved is a practical one, and brings squarely to the popular forum the issue of "government by injunction," or government by the will or consent of the governed. As a question of power, power will decide it, but whether the paramount force reside in the people, or in not-the-people, remains to be seen. The court itself would not have raised such an issue if it were not confident of its allies; but here is a proper case to try conclusions as to who rules?

As the people elect the executive and legislative departments, they should elect the judiciary, so as to put them all on an equal plane of subordination to the people, and to save trial by jury. The courts will be all the better the sooner they are rid of their foolish notions of supremacy and irresponsibility.

WHAT IS PATERNALISM?

When a certain class furiously abuse what they call "paternalism" and with equal fervor exhort all men to beware of it, it should be clearly defined and understood what it is that is so abused and which is to be so sedulously shunned. Not only so, but it should be shown indubitably by facts and reason that this "paternalism" is worthy of the abuse heaped on it, and that it is madness to be heedless of the vociferous warnings against it.

Rational men, however, frequently find that men and things are abused, not because they are abuse-worthy, but because they are in somebody's way and abuse is so easy and cheap. Give a dog or a man a bad name, merited or unmerited, and it will be difficult to outlive or get rid of. That is the plain rationale of the matter; and the fair presumption in all cases of mere abuse that there is little real justification for the vilification. And so it is with respect to what is called "paternalism." Even the most virulent and stinkiest maligner of it, will agree that, in some degree, in some things, a certain sort of "paternalism" is, or may be, very excellent indeed; for, unless this be admitted, it may happen that the maligner will have cut the dirt from under himself by his wild denunciations.

The modern philosophy which one may gather from the writings of Herbert Spencer, Buxley, Darwin, and their contemporaries amounts to: "The Devil take the hindmost. Every man against all, and everyone for himself." Sometimes varied thus: "Every man for himself and against all, and the Devil take the hindmost." There is no humanity, nor Christianity, in this philosophy; but our temporal conviction is that self, self, is the beginning and end, the center and circumference, and the foundation and turret of all right, all truth and all worth knowing.

Yet our philosophers have had to concede something to co-operation, combination and association—wholly, however, "on the make," and our business-men, in war and charity, make investments for the commonwealth and the common good that yield them dividends on their shares, in ammunition as well as in lining, with no danger on the one hand, nor privation on the other. Self, however, in practice, maintains its supremacy and dominance by making all men and all things work for it, or render it tribute; and any suggestion that it shall share only as others share, recognizes a family union and a paternal rule of work, conduct and of the division of profits that are infinitely adherent to that refined feeling which exalts self and turns all others into servants and servants. Equality of right, of opportunity, of profit, of labor, of liberty, of anything, is "paternalism," because it is all of natural inheritance and birthright; but it is all the more abominable in that it is of no regard to special merits whereby men get the better of others or get above them.

There is the public pump, look you. What a polluter of body and morals it is! What a disseminator of disease and pest! Yet it may expand into a system of water-works for a great population of people—the common property, for common benefit. How self and self-esteem content such common things—"paternal provisions for all." The trust should have that pump, or the water-works. The best people first supplied, then the waters could go on down to every successive level—the trust only exacting a small tribute by reason of its monopoly and care.

Free trade (or unrestrained business), competition and the like, they say, are lingering superstitions that have cost the world and mankind dearly, and

whose age and custom enable them to delude many; yet they are no better than socialism and communism. The latter actually propose to abolish trusts, as personal and private schemes, and adapt them to society as socialism, or to communities as communism! The argument is that if we are to have monopoly, it can only exist for all; and that competition must be free to all, or be forbidden to all, for the benefit of all. How specious! Instead of a lot of private individuals or corporations seizing all things and controlling them for their special benefit, let the State take all things in hand and administer them for the general benefit. If the people are to have either the trusts, or the "all in common," it is a matter for them to decide.

Beyond and above all is liberty! Where is it to exist in either the private system, or the public commune? Will any sane man say that there is liberty and independence where competition is in manacles, or in exile, and monopoly, the master of all? Who can and will deliver us from the body of this death?

THE PEOPLE'S SENATOR.

THE VIRGINIAN-PILOT took sides with the May Conference at Richmond in favor of a reform in the mode of election of U. S. Senators; but from the first it called attention to the difficulties and delays that would surely attend the attempt to secure the necessary amendment to the U. S. Constitution to enable the people to elect the Senators by direct popular vote. In view of these certain delays, THE VIRGINIAN-PILOT laid much stress upon the action of the people of the Democratic primary elections or county conventions, urging that in these primaries the voters could and should express their preference for a U. S. Senator, whenever necessary, and every county or legislative district instruct its candidate (if elected) for whom to vote.

No question had ever been raised since the formation of the government as to the right of any legislative constituency to instruct its candidate as to men or measures, and none was raised in this case; but there was a difference of opinion as to how the people (in advance of constitutional amendment) could best express their preference as to a Senatorial candidate: Some were in favor of a primary election ordered by the State Committee, or by a State Democratic Convention called by that committee, or by popular action in the respective primaries, severally—whether the primary was a county convention or a primary election. We stood by the last; not only because we believed it the best and most proper plan under all the circumstances, but also because we were convinced that the great majority of the people preferred this plan.

The conference of May was a great success in some respects; but it appointed a committee and adopted a resolution (on the urgency of gentlemen prominent in the movement) asking the State Democratic Committee to call a State Convention to nominate a U. S. Senator this fall; but the committee has met and declined, by 37 votes to 11, to call the convention asked, and, on a separate motion, refused also to call or order a primary election—alleging various reasons therefor, but chiefly because the people had not spoken in a way that indicated their desire to be so strong for a new method of electing U. S. Senators as to require the committee to call a convention.

Thus, THE VIRGINIAN-PILOT has its views fully and strongly sustained by the State Committee, as they had been approved by the Democratic people of the State, and we are accordingly gratified, especially as we believe the convention would have been very dangerous and let down the bars to evil, at a time when it behooves the party to be as discreet as possible.

But the people all over the Union have been strongly stirred in this matter, and not only in Virginia, but wherever a U. S. Senator is now to be chosen, the voters will clearly indicate to their legislative candidates, in nominating them, whom they prefer as the successor of Senator Martin—himself, or someone else. Yet, whether the Virginia voters prefer Mr. Martin or another, they should clearly express this in choosing their Senators and Delegates for the General Assembly; and we trust that they will do this for the benefit of the example to other States, where Senatorial scandals are becoming the opprobrium of our government.

CONVICTS VERSUS HONEST WOMEN.

Women, especially Southern white women, have very restricted fields of labor in which to glean a living. One of these fields is that of the seamstress, and ready-made clothing has greatly narrowed these, especially as machines now chiefly do the work. For years the North Carolina Penitentiary has been running with its convict labor a \$5,000 plant for the manufacture of shirts. Now the prison has purchased the plant, outright and is using it on account of the State, in competition with the unfortunate honest women who have to resort to needle and thread for bread.

It is not necessary to go into the whole question of this policy of putting the State in competition with its women and then intensifying this cut-throat system by introducing criminal labor as the competitor of the poor woman struggling to live by her own industry, honestly and decently. There is the fact. Think of it. Why not help the women?

The articles of to-day and to-morrow conclude the series of "Governments of the World of To-Day," and close the spring courses. We will begin on Thursday the publication of examination questions.

VIRGINIAN-PILOT'S HOME STUDY CIRCLE
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DIRECTED BY PROF. SEYMOUR EATON.

SUBJECTS OF STUDY IN THE ORDER IN WHICH THEY WILL BE PUBLISHED.

- EVERY SUNDAY—History—Popular Studies in European History.
- EVERY TUESDAY—Geography—The World's Great Commercial Products.
- EVERY WEDNESDAY—Governments of the World of To-day.
- EVERY THURSDAY AND FRIDAY—Literature—Popular Studies in Literature.
- EVERY SATURDAY—Art—The World's Great Artists.

These courses will continue until June 26th. Examinations conducted by mail, will be held at their close as a basis for the granting of certificates.

GOVERNMENTS OF THE WORLD OF TO-DAY.

XII.—AUSTRIA-HUNGARY.
BY FREDERIC W. SPIERS, PH. D.

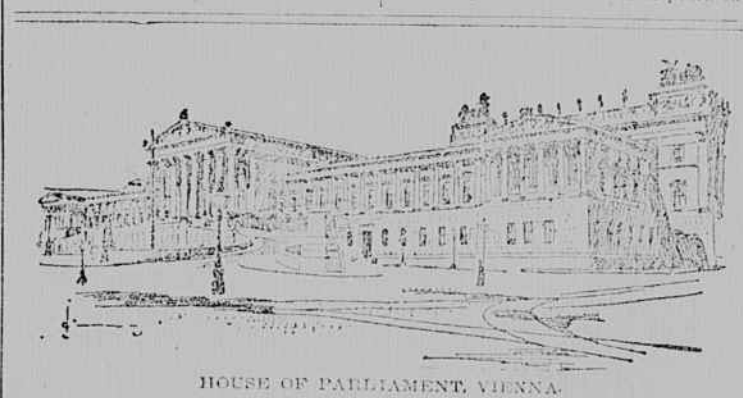
DUAL MONARCHY.
In political science governments are classified under two great heads—centralized and federal. Great Britain, France, Russia, Italy are centralized governments. The United States, Germany, Switzerland are federal governments. But there are two European governments which cannot be brought within the ordinary classification. We designate each of these countries by a double name joined by a hyphen, and we classify them as dual monarchies. They are Austria-Hungary and Sweden-Norway. This singular institution, the dual monarchy, is a union under a single sovereign of two kingdoms, each of which preserves its individuality quite completely.

Thus in order to understand the dual government which is the subject of this paper it is necessary to examine separately three distinct sets of govern-



THE AUSTRIAN EMPIRE.

Austria first appeared on the map of Europe in the early medieval period as an insignificant state ruled by a petty lord. But at the close of the thirteenth century a member of the powerful royal house of Hapsburg ascended the throne, and soon Austria became the greatest state of eastern Europe. From the beginning of government distinct races have inhabited the country, but the Germans have always been the dominant people and Austria has aspired to the leadership of the German states. When the German confederation was formed in 1815 by the congress of Vienna that was called to undo Napoleon's work, the emperor of Austria was made the president of the league. But meantime Prussia had



PROVINCIAL DIETS.

The Austrian parliament shares the lawmaking power of the empire with seventeen minor legislatures which exist in the principal provinces. The Austrian system thus exhibits a faint resemblance to our American federal plan of national and state legislatures. The fundamental law enumerates the powers of the reichsrath and then declares that all powers not granted to the imperial parliament are reserved for the provincial diets. Thus the diets of the provinces are given control of local government, agriculture, certain classes of schools and charitable institutions. These diets consist of a single chamber each and their members are elected by a system of class representation similar to that employed in constituting the house of representatives of the imperial parliament. The provin-

cial diets are controlled quite completely by the emperor. His sanction is necessary to make their measures legal, and he appoints the presiding officer of each diet, who has extensive powers over the arrangement of business and may dissolve the diet at any time upon order from the crown.

POWER OF THE EMPEROR.

The power of the emperor as chief executive is very extensive. The ministry is responsible to him personally and not to the reichsrath. In this respect the system is similar to that of Germany. Whereas in other governments under the parliamentary form the monarch has practically lost his theoretical right of veto, in Austria the emperor does not hesitate to disapprove bills passed by the parliament. The numerous party groups in the house of representatives, which on account of race antagonism, to be explained later, cannot act together to form an effective opposition to the ministry, give the emperor opportunity to play off one party against another and so govern with a free hand according to his own imperial will. Austrian government thus has a personal character which very few modern states exhibit. The popular confidence in the justice and good judgment of the present emperor makes the Austrian people content to submit to his personal government to an extent which no other great European nation would tolerate in these days of democratic aspirations. When the good emperor finally lays down the reins of government he has held for half a century Austria is likely to demand a much larger measure of self-government through her parliament than she enjoys at present.

THE KINGDOM OF HUNGARY.

The second element in the dual monarchy is the Kingdom of Hungary. This country, which has been ruled by the imperial line of Austria since 1526, possesses a distinct government, founded on the independent institutions developed long before the country fell into the hands of the royal house of Austria. Hungary, like Austria, is inhabited by several distinct races, but since the ninth century, when the Magyars invaded the region from Asia and conquered it, they have controlled the government. Although the Magyars do not constitute a majority of the population, they far outnumber any other single race element, and thus, in the absence of union among the other races, they dominate the government.

The house of Austria after its accession in the sixteenth century tried to destroy the independence of the Hungarian kingdom, but the proud Magyar nobles met with stubborn resistance to the attempts of their sovereigns to undermine their national institutions and succeeded in securing a large measure of self-government. When in 1849 Francis Joseph, the present emperor, tried to absorb his eastern kingdom into Austria, Hungary issued a declaration of independence and under the lead of Louis Kossuth attempted to make good that declaration with the sword. Austria, however, with the aid of Russia and for ten years Francis Joseph ruled as an absolute monarch. But the country was so restive under the suppression of its independence that Austria, which had meantime lost part of its Italian possessions, deemed it prudent to concede the unwilling Hungarians before the smoldering fires of discontent broke into a blaze of revolution. So a series of negotiations subjected ended in 1867 in the recognition of the present legislative independence of Hungary. Francis Joseph was then crowned king of Hungary, according to the ancient custom, and the existing plan of a dual monarchy went into effect.

THE HUNGARIAN PARLIAMENT.

The Hungarian government is quite similar to the Austrian in its general outlines. The parliament is a two-chambered body, made up of a house of magnates and a chamber of deputies. The house of magnates is somewhat unique in composition. It is composed of those members of the titled nobility who pay land taxes amounting to at least \$500 annually, of the high officers of the Roman Catholic, Greek and Protestant churches, of certain government officials and of life members appointed by the king. The nobility has the unusual privilege of seeking election to the chamber of deputies. If nobles are chosen deputies they resign temporarily their hereditary seats in the house of magnates. Since in all countries where ministerial responsibility is in force, the popular house is the more influential, the nobles frequently avail themselves of the opportunity to enter the more important, if less dignified, body.

The chamber of deputies is made up of representatives elected for a term of five years. The qualifications for voters are a minimum age of 20 years, the ability to speak Magyar, and, except in the case of members of the learned professions, payment of a small tax. The organization of the chamber of deputies is complicated by the existence in Hungary of a semi-independent province, that of Croatia, Croatia has a diet of her own, which decides for the province on all matters except those which touch the common interests of the kingdom. The province elects forty members of the Hungarian chamber of deputies, and these members take part only in those affairs which concern the province as a part of the kingdom. For all other business the Hungarian chamber of deputies consists of 413 members elected by the kingdom exclusive of the province of Croatia.

INFLUENCE OF THE CROWN.

The power of the crown in Hungary is less extensive than in Austria. The Hungarian ministry recognizes responsibility to parliament, while the Austrian ministry is responsible to the crown. The Hungarian ministry thus approaches the British type of self-government through parliament in Hungary is of ancient origin, being founded upon a charter called the Golden Bull, which dates back to 1222, and is thus almost contemporary with the Magna Charta of England. The Golden Bull placed rigid limits upon the power of the crown, and the Hungarians have never lost the tradition of self-government. Thus the personal influence of Francis Joseph which we noted as a leading feature of Austrian government is much less potent in the independent Magyar kingdom.

Note.—This paper will be concluded to-morrow.

EXAMINATIONS AND CERTIFICATES.

At the end of the term of seventeen weeks, a series of questions on each course, prepared by Professor Seymour Eaton, will be published in the VIRGINIAN-PILOT, and blanks containing the questions will be furnished every subscriber making application for same. Two weeks will be allowed after the courses close, for the receipt of examination papers containing answers. These papers will be referred to a Board of Examiners, who will assist Professor Eaton, and as soon as the work of examination is complete, the result will be reported, and certificates issued to the students entitled to them.